IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13855 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARIF KHAN ABDUL RASHID SURTI

Versus

STATE OF GUJART

Appearance:

1. Special Civil Application No. 13855 of 2003

MR EE SAIYED for Petitioner No. 1

MR SIKANDER SAIYED for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/10/2003

ORAL JUDGEMENT

By way of filing this special civil application, the petitioner has challenged the order passed by the

Deputy Commissioner of Police, South Zone, Surat City on 3.9.2003 purported to have been passed under sec. 66(2) of the Bombay Police Act, 1951, whereby the petitioner was directed to be detained. In pursuance of such order, the petitioner came to be detained on 3.9.2003.

The facts reveal that under sec. 56(B) of the Bombay Police Act, 1951, competent authority passed an order against the petitioner for removing him from the district of Surat and adjoining Districts. That order came to be passed on 9.5.2002 and accordingly, the petitioner was directed to be removed from the said district for two years. The said order became final as no statutory appeal provided for came to be filed by the petitioner against the above said order. Thereafter, as per the report of Athwa Lines Police Station, Police Inspector, the petitioner breached the above said order of externment and not only entered into the district of Surat, but two offences also came to be registered against the petitioner, one at Umra Police Station being CR No. I-197/2002 under sec. 143, 147, 148, 149, 341, 323, 307 of IPC and under sec. 135 of BP Act on 14.5.2002 and second offence came to be registered before the Athwa Lines Police Station vide CR No. II-274/2003 under sec. 142 of BP Act on 2.9.2003 in respect of breach of the order of externment passed against the petitioner. The petitioner, therefore, was arrested and accordingly, after arresting him, the order impugned came to be passed for the detention of the petitioner.

Ld. Advocate Mr EE Saiyed for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. Ld. AGP also places on record the affidavit in reply filed by the detaining authority i.e. Deputy Commissioner of Police, South Division, Surat City, which is also taken into consideration.

Ld. advocate for the petitioner Mr Saiyed contended that the authority concerned was not required to pass the above said order keeping the petitioner in jail because the petitioner has not violated any order passed against him for externment. In para-3 of the petition, as pointed out by Mr. Saiyed, the petitioner was an absconding accused in a crime registered against him under the IPC at Umra Police Station and since the family members who were requested the police authority to produce the petitioner before the Umra Police Authority, the petitioner entered in the district. In any case, ld. advocate Mr. Saiyed assures this court that the detenu-petitioner shall file an undertaking before this court that in any circumstances, the petitioner shall not

enter in restricted zone during the period of the order of externment passed against him. Though ld. AGP Ms. Panchal on facts as well as law, controverted the contention of the petitioner, but having regard to the facts of this case, this special civil application can be disposed of with the following order:

The petitioner is directed to file an undertaking before this Court that in any circumstances, he will not enter the restricted zone until the order of externment stands against him and on that strength this petition is allowed to the extent that the impugned order of detention which is dated 3.9.2003 is hereby quashed and set aside. The detenu- Arif Khan Abdul Rashid Surti is directed to be released forthwith, if he is not required to be detained in jail for any other purpose, after detenu files an undertaking as aforesaid before this court. A copy of such an undertaking furnished by the detenu, be given to Deputy Commissioner of Police, South Zone, Surat City. This order shall not affect the powers of the competent authority under sec. 66(2) of the Bombay Police Act, 1951 to remove the detenu from the restricted zone. Rule is made absolute to the above extent with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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